

The record indicates plaintiff previously attempted to raise his claims in a petition for a writ of habeas corpus in this court, but the petition was dismissed for his failure to obtain authorization from the Tenth Circuit Court of Appeals to file a second or successive § 2254 action, pursuant to 28 U.S.C. § 2244(b)(2)(A). *Ake v. Edmondson*, No. CIV-08-407-FHS-KEW (E.D. Okla. Oct. 29, 2008). Plaintiff subsequently requested authorization from the

Tenth Circuit to file a second or successive § 2254 petition, based on a new legal theory. *In re Ake*, No. 09-7015, slip op. at 1-2. The application was denied, because he failed to satisfy the requisite conditions in 28 U.S.C. § 2244(b)(2). *Id.*, slip op. at 2-3. A notation on plaintiff's copy of the Tenth Circuit's order indicates his new legal theory is the basis of his civil rights case. *See id.*, slip op. at 2.

The court has carefully reviewed the record and construes plaintiff's pleadings liberally. *Haines v. Kerner*, 404 U.S. 519 (1972). To the extent plaintiff claims he is wrongfully imprisoned, however, a § 1983 cause of action is not the appropriate means for seeking such relief. Rather, habeas corpus is the exclusive remedy for a state prisoner challenging the fact or duration of his confinement, when the relief sought includes immediate or speedier release. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). Therefore, the court finds plaintiff has failed to state a claim upon which relief may be granted.

Although plaintiff has not paid the filing fee in this action or been granted leave to proceed *in forma pauperis*, the court is empowered to dismiss the complaint pursuant to 28 U.S.C. § 1915A:

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--


(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A.

**ACCORDINGLY**, this action is, in all respects, **DISMISSED** for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915A(b)(1).

**IT IS SO ORDERED** this 22nd day of June 2009.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma